IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8186 OF 2005

Prashant P. Hulyalkar ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Smt.Racheeta R. Dhuru, amicus curiae, for the Applicant (appointed).

Mr.A.S.Gadkari, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : MAY 03, 2006.

P.C.:

. Heard Smt.Dhuru learned Advocate appointed as amicus curiae for the applicant and Mr.Gadkari learned APP for the State.

2. The applicant has preferred this application through jail with a prayer that the sentences in four cases in which he has been convicted, be made concurrent. The applicant has been convicted by the learned J.M.F.C. (A.C.), Pune in R.C.C.Nos.372 of 2003, 381 of 2003, 91 of 2004 and 92 of 2004. In R.C.C.Nos.381 of 2003 &

372 of 2003, the applicant was convicted on 6.4.2004 and in R.C.C.Nos.91 of 2004 & 92 of 2004 the applicant was convicted on 8.4.2004. In all the four cases, the applicant was convicted under Section 379 of IPC. In all the four cases, the applicant pleaded guilty and in view of the nature of offence he came to be convicted by the learned Magistrate.

. In R.C.C.No.372 of 2003 the applicant was sentenced to suffer R.I. for three years and to pay fine of Rs.500/-, in default S.I. for three months. In R.C.C.No.381 of 2003 the applicant was sentenced to suffer R.I. for two years and to pay fine of Rs.1000/-, in default S.I. for three months. In R.C.C.No.91 of 2004 the applicant was sentenced to suffer R.I. for two years and to pay fine of Rs.1000/-, in default S.I. for two months. And, in R.C.C.No.92 of 2004 the applicant was sentenced to suffer R.I. for two years and to pay fine of Rs.1000/-, in default simple imprisonment was also imposed.

3. The applicant has not preferred any appeal against the judgment and order of conviction

passed by the learned Magistrate in the said four cases. However, the applicant preferred a revision i.e. Criminal Revision Application No.172 of 2005 before the 6th Additional Sessions Judge, Pune praying therein that the sentences in all the four cases be directed to run concurrently. The learned Sessions Judge, Pune by order dated 9.6.2005 dismissed the revision.

4. Thereafter, the applicant has preferred this application, praying that the sentences in all the four cases be directed to run concurrently.

5. In all the four cases, the applicant has been convicted for theft of bags from the S.T.Bus Stand at Shivaji Nagar, Pune. The offence pertaining to R.C.C.No.381 occurred on 8.2.2003, the offence pertaining to R.C.C.No.372 of 2003 occurred on 4.5.2003, the offence pertaining to R.C.C. No.91 of 2004 occurred on 19.1.2003, and the offence pertaining to R.C.C. NO.92 OF 2004 occurred on 27.3.2004.

6. The Supreme Court in the case of **Mohd. A.**

Hussain Vs. Asstt.Collector, Customs (Prevention) Ahmedabad reported in **A.I.R. 1988 S.C. 2143** has observed as follows :

> "The basic rule of thumb over the years has been the so called single transaction rule on concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different." (emphasis supplied).

. The later principle will govern the case on hand. In other words, as both the offences committed by the applicant were independent and not arising from one transaction as such, the applicant ought to suffer consecutive sentences and the sentences in the two cases cannot be directed to run concurrently.

7. Hence, the prayer of the applicant that the sentences in all the four cases be directed to run concurrently is liable to be rejected.

8. At this stage, the learned Advocate

appearing as amicus curiae for the applicant has stated that the applicant has no other family members except a younger sister. As the applicant is in jail, his younger sister is forced to reside with some relatives, who are not taking proper care of her. Moreover, the sister has reached marriageable age and as the applicant is in jail there is no one interested to make any arrangement for the marriage of the younger sister of the applicant. Hence, the learned amicus curiae prayed that at least the sentences in all the four cases may be reduced, so that the applicant may be released earlier from jail and he can take care of his younger sister.

9. Looking to the facts of this case, the said prayer appears reasonable. In this view of the matter, I am inclined to reduce the substantive sentence of imprisonment in all the four cases.

10. The sentence of R.I. for three years in R.C.C.No.372 of 2003 is reduced to two years. The substantive sentences of R.I. for two years, in all remaining three cases i.e.R.C.C.Nos.381/2003, 91/2004 & 92/2004, is reduced to one year in each

of the three cases. It is made clear that the fine amount and in default sentences as imposed in all the four cases by the learned Magistrate are confirmed.

11. Office to send copy of this order to the applicant-Prashant P. Hulyalkar, who is in Yerwada Central Prison, Pune.

(SMT.V.K.TAHILRAMANI,J.)